D.B. CIVIL SPECIAL APPEAL NO.152/2006

Ganesh Das
Vs.
Laxmi Narain & Ors.

Date of Order :: 07-11-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri K.C. Samdariya, for the appellant.

This special appeal is directed against part of the order dated 3.10.2006 in Civil Second Appeal No.30/2001 whereby while admitting the appeal of the appellant, the learned Single Judge directed him to pay rent @ Rs.1500/- per month as a condition of stay.

Section 100A of the Code of Civil Procedure as it stood even prior to the 1999 or 2002 amendments barred further appeal against the decision in second appeal. This is not disputed by the counsel for the appellant. He however submits that the relevant part of the order should be treated as original order. The submission is totally misconceived. In our opinion, if appeal does not lie against the final decision in second appeal, interim order passed in the appeal cannot be challenged by way of appeal treating it as an original order. What

is relevant is the nature of the proceeding/appeal in which order is passed, and not the nature of the order.

The appeal is dismissed in limine as not maintainable.

[MOHAMMAD RAFIQ],J. [S.N.JHA],CJ.

Praveen